Supreme Court, U.S.
FILED
OCT 1 1996
CLERK

No. 96-172

In the Supreme Court of the United States

OCTOBER TERM, 1995

EDWARD J. HOLLAND, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
ANTHONY J. STEINMEYER
MARC RICHMAN
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether Michigan's 10-year statute of limitations on the enforcement of judgments applies to limit a suit brought by the United States to enforce a judgment that arose from the actions of a federal agency taken in a governmental capacity.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Chesapeake & Delaware Canal Co. v. *United States*, 250 U.S. 123 (1919)	5
Farmers Home Admin. v. *Muirhead*, 42 F.3d 964 (5th Cir.), cert. denied, 116 S. Ct. 50 (1995)	6, 7
O'Melveny & Myers v. *FDIC*, 512 U.S. 79 (1994)	8
United States v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979)	8
United States v. *Summerlin*, 310 U.S. 414 (1940)	4, 5
United States v. *Yazell*, 382 U.S. 341 (1966)	8

Statutes:

Bankruptcy Act, Ch. XI, 11 U.S.C. 1101 *et seq.*	2
Small Business Act of 1963, Pub. L. No. 163, 67 Stat. 232:	
§ 204, 15 U.S.C. 633	2
§ 205, 15 U.S.C. 634(b)(4)	6
26 U.S.C. 6322	7
26 U.S.C. 6502(a)(1)	7
28 U.S.C. 3011	3
28 U.S.C. 3201(c)	7
Mich. Comp. Laws Ann. § 600.5809(3) (West 1987)	3

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 96-172

EDWARD J. HOLLAND, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 7a-18a) is reported at 75 F.3d 252. The opinion of the district court (Pet. App. 31a-33a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 1996. A petition for rehearing was denied on May 2, 1996. Pet. App. 5a-6a. The petition for a writ of certiorari was filed on July 31, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This suit was brought by the United States to enforce a judgment obtained against petitioner in 1978. That judgment is based on an obligation incurred by petitioner in connection with a federal loan guaranty program administered by the Small Business Administration (SBA), a federal agency established by Section 204 of the Small Business Act of 1953, Pub. L. No. 163, 67 Stat. 233, 15 U.S.C. 633. This program is designed to promote the training and hiring of members of racial minorities. Peoples Household Furnishing, Inc. (Peoples), a minority-owned company, borrowed $350,000 from a local bank under that program. The SBA guaranteed 90% of the loan. Petitioner, who was the president of Peoples, personally guaranteed the loan. Pet. App. 8a-9a.

Peoples was the successor of a Detroit-area retailer that had been forced into reorganization under Chapter XI of the Bankruptcy Act. Although Peoples' loan application failed to meet the SBA guidelines for loan approval, it was approved by the SBA's District Director, "who felt that the social welfare advantages of the proposal, in providing 'a sympathetic training environment for persons in minority groups,' outweighed the adverse factors which normally would justify rejection of such a loan." Pet. App. 9a n.1. The District Director required petitioner's personal guarantee of the loan as a condition of its approval. *Ibid.*

A promissory note entered into between Peoples and the bank in 1970 memorialized the loan. The underlying financing agreement provided that the laws of Michigan were to govern. Peoples thereafter defaulted on the note and, in 1971, the bank assigned

the note to the SBA. The SBA subsequently demanded payment in full from Peoples and petitioner. After the demand was not met, the corporation's assets were liquidated at a public sale. The proceeds were credited against the balance owing. Pet. App. 9a-10a.

In December 1973, the United States filed suit for the deficiency against Peoples and petitioner in federal district court. Peoples received a discharge in bankruptcy before the case went to judgment. In February 1978, the district court entered judgment against petitioner on his personal guaranty. The judgment, which included accrued interest, was for $435,487 plus costs and six percent interest from January 18, 1978. Pet. App. 10a.[1]

2. In April 1993, the United States filed suit against petitioner in federal district court to collect the unpaid balance of $884,174 on the 1978 judgment. The complaint sought judgment in that amount, plus interest and a ten percent surcharge pursuant to 28 U.S.C. 3011. Petitioner moved to dismiss the complaint under Mich. Comp. Laws Ann. § 600.5809(3) (West 1987), which provides that "the period of limitations is 10 years for actions founded upon judgments or decrees rendered in a court of record of this state, or in a court of record of the United States * * * from the time of the rendition of the judgment." Pet. App. 10a-11a. The district court denied the motion and granted summary judgment for the government. The court noted that, under the well-established rule

---

[1] The government asserted that it made several unsuccessful efforts to collect this judgment. Petitioner claimed that the government made no such efforts. This factual dispute was not resolved by the district court. Pet. App. 10a.

of *United States* v. *Summerlin*, 310 U.S. 414 (1940), the United States is not subject to state statutes of limitations with respect to claims acquired and asserted in a governmental capacity. Pet. App. 32a. The court of appeals affirmed on that same basis. *Id.* at 14a-16a.[2]

ARGUMENT

The decision of the court of appeals correctly applies well-settled precedents of this Court and conflicts with no decision of any other court of appeals. Further review is therefore not warranted.

1. The United States is not bound by state statutes of limitations with respect to claims acquired and asserted by the United States in its governmental capacity. *United States* v. *Summerlin*, 310 U.S. 414, 417 (1940). Speaking for a unanimous court in *Summerlin*, Chief Justice Hughes observed that it is "well settled that the United States is not bound by state statutes of limitation * * * in enforcing its rights." *Id.* at 416. A state statute would "transgress[ ] the limits of state power" if applied to limit the claims of the United States. *Id.* at 417. The

---

[2] The judgment was for "the sum of $884,174.38 plus interest at the rate of six percent per annum from the date of default to the date of judgment; costs; penalty charges; ten percent surcharge per 28 U.S.C. § 3011(a); and interest from date of judgment at the legal rate in effect on such date." Pet. App. 11a n.3. According to the complaint, the $884,174.38 figure already included interest to April 15, 1993. The court of appeals did not understand why the government should be entitled to additional interest on that figure "from the date of default," and it questioned the penalty charges and surcharge as well. Although petitioner had not raised this issue on appeal, the court stated that it did "not intend to preclude him from doing so in the district court." *Ibid.*

Court explained that, "[w]hen the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement." *Ibid.*, citing *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U.S. 123, 126, 127 (1919).

In applying *Summerlin*, the court below correctly held (Pet. App. 14a-16a) that the United States' suit on the judgment was an action taken in a governmental, rather than in an individual or proprietary, capacity. As in *Summerlin*, a federal statute authorized the government to become the assignee of the note on which it brought suit in this case. The court found that "[t]he statute in question was designed to enhance the security and economic well-being of the nation, see 15 U.S.C. §631, and its purposes are surely no less 'governmental' in character than those of the National Housing Act at issue [in *Summerlin*]." *Id.* at 14a-15a.

The court of appeals concluded that the SBA decision to approve the Peoples loan was based entirely on the "social welfare advantages" of the loan. Pet. App. 15a. As the court explained, the agency's motivation "had a quintessentially governmental cast to it. The approval of the loan, like the taking of the assignment when the loan went sour, was unquestionably governmental, in our view, and not proprietary." *Ibid.*

The United States also acted in a governmental capacity when it reduced its claim to judgment and then later brought suit on the judgment. The Small Business Act authorizes the agency to "pursue to final collection * * * all claims against third parties

assigned to the Administrator in connection with loans made by him." 15 U.S.C. 634(b)(4). The suit to enforce the judgment against petitioner falls precisely within this statutory authority. The court thus correctly concluded that the United States was acting in a governmental or sovereign capacity in this case.

2. Although the court of appeals correctly concluded that well-settled precedent compelled its decision, the court questioned the wisdom of those precedents. Pet. App. 16a-18a. In so doing, the court noted that, in *Farmers Home Admin.* v. *Muirhead*, 42 F.3d 964, cert. denied, 116 S. Ct. 50 (1995), the Fifth Circuit had stated in dictum:

> [T]he ancient attribute of sovereignty asserted by the federal government is far more appropriate to essential sovereign functions than to the federal government's role as a lender to veterans, small business owners, farmers, and disaster victims among others. That the attribute is ancient does not make it sensibly applicable to the government's role in commercial transactions. * * * In short, *Summerlin* and related cases ought to be reconsidered insofar as they hold that state statutes of limitations may not be applied to the government's real property foreclosure actions arising from federal loan programs.

42 F.3d at 967-968. Although, like the court in the present case, the *Muirhead* court questioned the logical basis of "*Summerlin* and related cases" (*id.* at 968), the Fifth Circuit nonetheless properly applied those decisions to hold the state statute of limitations

inapplicable to the federal agency's action to enforce its lien. *Id.* at 967.[3]

In the present case, the court of appeals did not think "it really justifiable, in today's world, that judgments obtained on loans made or guaranteed under these programs should be subject to resuscitation 15 or 30 or 60 years after entry, regardless of state law to the contrary." Pet. App. 17a. But that very question was addressed and resolved to the contrary by this Court in *Summerlin*. Moreover, in particular contexts in which interests of third parties may be affected, Congress has fixed by statute a period of limitation for governmental claims. See, *e.g.*, 28 U.S.C. 3201(c) (limiting judgment liens on a judgment debtor's real property to 20 years, once renewable); 26 U.S.C. 6322, 6502(a)(1) (providing generally that a tax lien becomes unenforceable ten years after assessment of the tax). Having selected a period of repose for judgment liens on real property only in 28 U.S.C. 3201(c), Congress must be presumed, in light of *Summerlin*, to have intended *not* to limit enforcement of

---

[3] The facts in the present case are clearly distinguishable from those presented in *Muirhead*. *Muirhead* involved the effect of state statutes of limitations on the government's real property foreclosure actions. The court was concerned that the absence of any statute of limitations for such proceedings initiated by the government would disrupt commerce in real property because the existence of ancient mortgages would threaten to cloud titles. 42 F.3d at 965, 967-968. The instant case does not involve titles to real property over which more than one party may have a claim. Rather, this case involves a judgment of a United States District Court that petitioner flouted by refusing to pay. Petitioner could not rationalize to himself that perhaps the claim against him was invalid; he knew for certain that he owed the United States the amount of the judgment.

judgment liens by the United States against other forms of debtor property.[4] There is no conflict or other reason to warrant further review of this settled rule.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General
FRANK W. HUNGER
Assistant Attorney General
ANTHONY J. STEINMEYER
MARC RICHMAN
Attorneys

OCTOBER 1996

---

[4] None of the cases on which petitioner seeks to rely (Pet. 7-10, citing *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979), *United States* v. *Yazell*, 382 U.S. 341 (1966), and *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79 (1994)), involved a statute of limitations on a claim of the United States.